UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

RAYMOND MITCHELL, III]	
Petitioner,]	
]	
v.]	No. 3:06-0100
]	Judge Trauger
KENNETH LOCKE, WARDEN]	
Respondent.]	

ORDER

In accordance with the Memorandum contemporaneously entered, the Court finds merit in respondent's Motion to Dismiss (Docket Entry No. 10). Therefore, respondent's motion is GRANTED and this action is hereby DISMISSED. Rule 8(a), Rules - - § 2254 Cases.

When a district court has denied a habeas corpus petition on procedural grounds such as timeliness without reaching the petitioner's underlying constitutional claims, a certificate of appealability will issue only if the petitioner can show (1) that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and (2) that jurists of reason would find it debatable whether the procedural ruling was correct. Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).

In this case, the petition was clearly filed well beyond the expiration of the one year limitation period applicable to § 2254 habeas corpus actions. 28 U.S.C. § 2244(d). The petitioner failed to establish that equitable tolling of the limitation period would be appropriate in this instance. Therefore, reasonable jurists would not find the untimeliness of this action debatable. Accordingly, should the petitioner file a timely Notice of Appeal, such Notice shall be treated as

an Application for a Certificate of Appealability, 28 U.S.C. § 2253(c), which will NOT issue because the petitioner is unable to make a substantial showing of the denial of a constitutional right.

It is so ORDERED.

Aleta A. Trauger

United States District Judge